

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act of)	
1996)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	

COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc. (“Qwest”) hereby submits its Comments in response to BellSouth Telecommunications, Inc.’s (“BellSouth”) Petition for a limited and temporary waiver of the requirement to process orders under the revised commingling and service eligibility requirements (“EEL requirements”) set forth in the Federal Communications Commission’s (“Commission”) *Triennial Review Order*.¹ Although circumstances have changed significantly since BellSouth filed its Petition, the general relief it seeks is still warranted. As a

¹ Petition for Waiver (filed Feb. 11, 2004) (“Petition”). And see *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 and 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (“TRO”), *vacated in part and remanded in part, sub nom. United States Telecom Association v. FCC*, 2004 U.S. App. Lexis 3960 (D.C. Cir. Mar. 2, 2004) (No. 00-1012) (“USTA II”). See also *Public Notice*, DA 04-404 (Feb. 18, 2004).

result, the Commission should waive the EEL requirements until there has been a valid finding of impairment for high-capacity transport and loops.²

In the *TRO*, the Commission established new eligibility requirements for access to enhanced extended loops (“EELs”) and commingling of high-capacity loop-transport circuits. In doing so, the Commission recognized that implementation of the new requirements could result in a substantial conversion of special access circuits to unbundled network elements (“UNEs”) and commingled circuits.³ However, the Commission indicated that facilities would be available for conversion only after there has been a finding that competitive local exchange carriers (“LEC”) would be impaired without unbundled access to those facilities: “[T]o the extent a competitive LEC meets the eligibility requirements *and a particular network element is available as a UNE pursuant to our impairment analysis*, it may convert the wholesale service used to serve a customer to UNEs or UNE combinations in accordance with the relevant procedures.”⁴

² If the *USTA II* decision takes effect without the Commission adopting interim rules, the EEL requirements will be without force in light of the court’s vacation of the high-capacity loop and transport impairment determinations.

³ *TRO*, 18 FCC Rcd at 17348-49 ¶¶ 586-88.

⁴ *Id.* at 17348 ¶ 586 (emphasis supplied). *Accord id.* at 17340-41 ¶ 575 (“[T]o the extent *DS1 transport facilities are available along a specific route*, for example, the incumbent LEC must provide (upon request) a DS1 EEL consisting of unbundled loop and unbundled transport facilities to any requesting carrier that qualifies for access to that combination.”) (citing *TRO*’s general discussion of impairment) (emphasis supplied; footnote omitted); *id.* at 17341-42 ¶ 577 (“On a going-forward basis, a requesting carrier may obtain a high-capacity EEL *any time the underlying network elements are available pursuant to our impairment analysis* and the carrier meets the eligibility criteria.”) (emphasis supplied; footnote omitted); *id.* at 17342 ¶ 578 (“Because the comprehensive impairment analysis we adopt herein addresses the arguments of Qwest and other incumbent LECs concerning the availability of alternative transmission facilities, additional conditions are not necessary to determine the availability of EELs and other UNE combinations.”).

The Commission also acknowledged that the EEL requirements would require incumbent LECs to modify their systems and business practices to accommodate such conversions,⁵ but noted that the negotiation process would establish a *de facto* transition period of up to nine months, to allow incumbent LECs to implement the EEL requirements and other provisions of the *TRO*.⁶ Under the framework established in the *TRO*, this transition period would run concurrently with the state commissions' nine-month proceedings determining where the impairment test was satisfied for high-capacity loops and transport. Thus, the EELs requirements generally would be implemented only with regard to loop-transport combinations that had been subject to a finding of impairment.

In its Petition, BellSouth requested a temporary waiver of the EEL requirements to preserve this linkage between the determination of impairment or non-impairment for high-capacity loops and transport and the implementation of the EEL requirements.⁷ While circumstances have changed dramatically since BellSouth filed its Petition, the underlying logic of the Petition remains: it makes no sense to allow conversions of special access services to EELs and commingled circuits until there has been a finding that carriers would be impaired without the loops and transport UNEs that comprise those circuits. If anything, this rationale

⁵ *Id.* at 17346-47 ¶ 583.

⁶ *Id.* (“We expect that change of law provisions will afford incumbent LECs sufficient time to complete all actions necessary to permit commingling.”) (footnote omitted); *id.* at 17405 ¶ 703 (establishing the section 252(b) nine-month negotiation and arbitration process as the default timetable for modification of interconnection agreements).

⁷ In addition to the specific relief requested in the Petition, BellSouth also requested the Commission to grant any other relief the Commission deems appropriate. Petition at 8. As a result, the Petition provides a sufficient basis for the Commission to grant the relief that Qwest advocates herein.

was strengthened by the D.C. Circuit's recent decisions in *USTA II*.⁸ It may be some time before there is a lawful impairment determination for high-capacity loops and transport. Until that time, it would be inefficient and wasteful, as well as contrary to the framework established in the *TRO*, to implement the EEL requirements.

As BellSouth notes, and the Commission has acknowledged, significant operational and billing modifications are necessary to implement the EEL requirements. These issues will be further complicated if special access conversions occur *before* the Commission completes its impairment determinations. Qwest maintains special access circuits in one billing system, and EELs and commingled circuits in another. While Qwest has established processes to accommodate this issue for conversions from special access circuits to EELs and commingled circuits, there has been no need until now to create processes for conversions in the other direction.

If the EEL requirements are implemented before the Commission makes an impairment determination, Qwest will have to develop manual processes to handle any subsequent conversions from EELs to special access circuits, EELs to commingled circuits, and commingled circuits to special access circuits. Much of this work will be unnecessary if the EEL requirements are implemented only after the Commission has made final impairment determinations. A temporary waiver of the EEL requirements will also avoid some of the “increase[d] . . . risk of service disruptions to competitive LEC customers” that may occur as a

⁸ *USTA II*, 2004 U.S. App. Lexis 3960 at * 108 (vacating Commission's delegation to state commissions of impairment determinations); *id.* at * 109 (vacating Commission's decision not to take into account tariffed special access services in impairment determinations); *id.* at * 49-50 (disagreeing with Commission's decision to ignore facilities deployment along similar routes when assessing impairment).

result of conversions.⁹ In light of these factors, the prudent approach is to delay implementation of the EEL requirements until the Commission has made a final impairment determination for high-capacity loops and transport that is consistent with the law.

CONCLUSION

For the reasons discussed above, the Commission should grant BellSouth's Petition and waive the implementation of the EEL requirements until there is a final, lawful impairment determination for high-capacity loops and transport.

Respectfully submitted,

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⁹ *TRO*, 18 FCC Rcd at 17348-49 ¶ 586.

CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System in CC Docket No. 01-338, CC Docket No. 96-98 and CC Docket No. 98-147, 2) served via email on Ms. Janice M. Myles, of the Wireline Competition Bureau's Competition Policy Division at janice.myles@fcc.gov, 3) served via email on the FCC's duplicating contractor Qualex International, Inc. at qualexint@aol.com, and 4) served via First Class United States mail, postage prepaid, on the party listed on the attached service list.

/s/ Ross Dino
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